

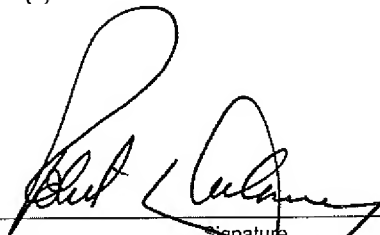
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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 03-026	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/729,162	Filed 12/05/2003	
	First Named Inventor Eric Walker		
	Art Unit 2178	Examiner David Faber	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number 28071</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>			
<p><input type="checkbox"/> *Total of 1 forms are submitted.</p>			


Signature
Robert Duloney
Typed or printed name
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Telephone number
May 17, 2007
Date

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ATTACHMENT TO PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant believes errors exist in the final rejection and respectfully requests review of the final rejection for the following reasons:

- 1) The meaning attributed by the Examiner to the term “grayscale” is unsupported and incorrect.
- 2) The Examiner’s application of the Coloring.com materials is conflicting and contradictory.

1) The meaning of “grayscale”

Each and every pending independent claim recites the use of a grayscale image. As noted at lines 1-3 of [0023], “grayscale images are images containing multiple shades or levels of gray.” Throughout the application, Applicant consistently uses the term “grayscale” to indicate an image having multiple shades or tones. (See lines 7-11 of [0023] and lines 11-16 of [0024])

In the initial office action mailed August 9, 2006 (see the second bulleted comment on page 6 of the first action), the Examiner stated, “Coloring.com discloses a grayscale image wherein only the two colors are shown, white and black; wherein black and white images are a form of grayscale images. Thus, the grayscale image is use as content for the element shown in pp 8, 17 of the web page.”

In the Amendment of November 2, 2006 (page 9), Applicant pointed out that the Coloring.com black and white line drawings, such as the rabbit figure shown on page 8 and 17 in the Coloring.com materials, are not grayscale images as that term is used by Applicant or as that term is understood and used in the art.

In the final action mailed November 20, 2006 (page 6), the Examiner repeated his opinion that the figures depicted in the Coloring.com materials are grayscale images and

referenced as support for his position the definition of “grayscale” in the *Digital Photography Glossary* published by Microsoft Corporation. The cited definition, in its entirety, is as follows: “Grayscale – A photo made up of varying tones of black and white. Grayscale is synonymous with black and white.” The Examiner pointed to the portion of the definition “Grayscale is synonymous with black and white” as establishing that an image containing only the two colors of black and white, with no varying intermediate shades of gray, are grayscale images.

Applicant believes this is a clear misreading of the definition. The cited definition is merely stating the widely known fact that in the field of photography, the term “black and white photograph” is used to refer to a photograph made up of varying tones of black and white. Applicant respectfully submits that the cited definition does not support the Examiner’s position and there is no factual basis for the Examiner’s interpretation of the term “grayscale” as including a black line drawing, such as those disclosed by Coloring.com.

2. The application of the teaching of Coloring.com

The following remarks refer specifically to the Examiner’s comments beginning at the bottom of page 4 of the final action regarding claim 1, but a similar defect exists in the Examiner’s rejections of independent claims 6, 10 and 16 and these remarks are intended to apply to those claims also.

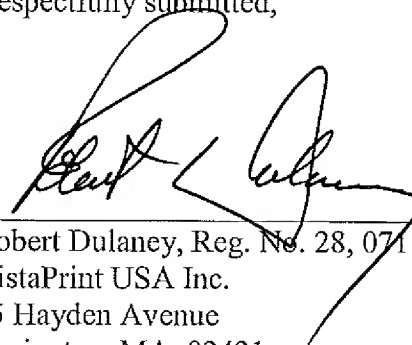
Claim 1 recites a method that includes “associating at least one color with a markup language element capable of accepting image content” and “applying a grayscale image as content of the element”. (See discussion in the application at [0021] and [0025].) The Examiner points to the Coloring.com rabbit drawing as being a markup language element capable of accepting image content. For example, the Examiner on page 4, lines 1-3 of the final action states “...markup elements (pp 6, list of the images or graphics the user may choose), wherein each markup element is a graphic or image”. On line 7 of page 4, the Examiner repeats that the Coloring.com markup language element is a

“graphic or image”. On lines 9-10 of page 4, the Examiner cites the rabbit shown on Coloring.com page 8 as being one such markup language element.

However, when the Examiner then turns to the next element of claim 1 (i.e., applying a grayscale image as content of the markup language element), the Examiner at page 4, lines 13-17 refers again to the same black and white rabbit drawing which earlier on page 4 of the final action was identified by the Examiner as being a markup element and now identifies that same drawing as being a grayscale image applied as content of a markup language element.

Applicant respectfully submits that the only reasonable and logical reading of claim 1 is that the claim requires a “markup language element capable of accepting image content” and a separate and distinct “grayscale image” that is applied as content of the markup language element. The Examiner’s arguments are logically inconsistent in that they characterize the rabbit drawing as being simultaneously both the container and the content placed in the container.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Robert Dulaney', is written over a horizontal line.

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